

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RACHEL FEVINGER,)	Case No. 5:13-cv-04839-PSG
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S
v.)	MOTION FOR LEAVE TO FILE
)	THIRD AMENDED COMPLAINT
BANK OF AMERICA, N.A., and)	AND DENYING DEFENDANTS'
US BANK, N.A. TRUSTEE,)	MOTION TO DISMISS PLAINTIFF'S
)	SECOND AMENDED COMPLAINT
Defendants.)	
)	(Re: Docket Nos. 45, 47)

Before the court is Plaintiff Rachel Fevinger's motion to file a third amended complaint.¹ Defendants Bank of America, N.A. and US Bank N.A. trustee oppose.² Plaintiff replied to the opposition.³ The matter was submitted without oral argument pursuant to Civ. L.R. 7-1(b). Having reviewed the papers, the court GRANTS Plaintiff's motion for leave to amend.

¹ See Docket No. 47.

² See Docket No. 49.

³ See Docket No. 60.

The court construes Rule 15(a) liberally so that amendments shall be granted “freely . . . when justice so requires.”⁴ If, however, amendment will prejudice the nonmoving party, is sought in bad faith, produces undue delay, or is futile, the court need not grant leave to amend.⁵ Although Defendants here invoke those limitations to amendment,⁶ and notwithstanding that Plaintiff has thrice attempted to formulate a proper complaint,⁷ the court finds that the balance weighs in favor of granting her request due to the exigencies surrounding her husband’s medical circumstances.⁸ Plaintiff is nevertheless warned that any deficiencies in her complaint should be adequately remedied so that her claims will survive this fourth and likely final round of pleading.

Granting this motion renders Defendants’ motion to dismiss Plaintiff’s second amended complaint moot; the motion is therefore DENIED.⁹ The parties shall follow an accelerated briefing schedule as follows: (i) Plaintiff shall file and serve her third amended complaint by June 13, 2014; (ii) any responsive pleadings or motions shall be due by June 20, 2014; (iii) any opposition by Plaintiff shall be due by June 27, 2014; (iv) on July 8, 2014, at 10:00 a.m., the parties shall appear for oral argument. No reply shall be considered. Any party wishing to appear by telephone may do so by reaching out to Mr. Oscar Rivera at (408) 535-5378.

IT IS SO ORDERED.

Dated: June 6, 2014


PAUL S. GREWAL
United States Magistrate Judge

⁴ See *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006) (quoting Fed. R. Civ. P. 15(a)).

⁵ See *id.* (citing *Bowels v. Reade*, 198 F.3d 752, 757-58 (9th Cir. 2001)).

⁶ Specifically, Defendants argue that amendment would prejudice them by increasing litigation costs, unduly delay this matter’s disposition, and would be futile as Plaintiff’s proposed TAC would not survive a 12(b)(6) motion. See Docket No. 49 at 8.

⁷ See Docket Nos. 1, 14, 43.

⁸ See Docket No. 47-2 at ¶ 11.

⁹ See Docket Nos. 45, 52, 59.